

RICHARD A. JONES (Bar No. 135248)
(rjones@cov.com)
COVINGTON & BURLING LLP
One Front Street
San Francisco, CA 94111
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

Attorneys for Plaintiff
Roots Ready Made Garments Co. W.L.L.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ROOTS READY MADE GARMENTS CO.
W.L.L.,

Plaintiff,

v.

THE GAP, INC., a/k/a, GAP, INC., GAP
INTERNATIONAL SALES, INC., BANANA
REPUBLIC, LLC, AND OLD NAVY, LLC,

Defendants.

Case No: C 07 3363 CRB

**DECLARATION OF ASHRAF ABU ISSA
IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Date: August 29, 2008

Time: 10 o'clock a.m.

Place: Courtroom 8, 19th Floor

Judge: Charles R. Breyer

Trial Date: October 6, 2008

Ashraf Abu Issa declares the following under penalty of perjury:

1. From the company's founding until in or around December 2004, I served as the Chief Executive Officer of Roots Ready Made Garments Co. W.L.L. ("Roots"). I make this declaration in opposition to the motion for summary judgment filed by Gap, Inc., Gap International Sales, Inc., Banana Republic, LLC, and Old Navy, LLC (collectively, "Gap").

2. In early 2003, Francois Larsen and Jacques Fabre, the principals of Gabana Gulf Distribution Company ("Gabana"), approached me with an offer from Gap to buy approximately 1.7 million pieces of outdated Gap overproduction inventory ("OP").

1 3. I explained that Roots was not interested in purchasing such a large volume of
2 outdated merchandise. On its own, the stock would be difficult to sell, and the deal would not
3 be profitable for Roots. Mr. Larsen indicated that, in return for Roots' purchase of the OP, Gap
4 would grant Roots the right to sell first-line Gap merchandise in the Arabic-speaking countries
5 of the Middle East and North Africa under Gap's International Sales Program ("ISP"). Roots
6 was interested in the opportunity to sell in-season Gap products in the region

7 4. Larsen arranged for Roots' principal, Sheikh Faisal Al-Thani and me to speak
8 by telephone with a Gap executive named Jim Bell. During the call, Bell offered to grant Roots
9 the right to sell first-line ISP merchandise in the Arabic-speaking countries in exchange for
10 Roots' purchase of the OP.

11 5. Subsequently, I had several other direct conversations with Bell during which we
12 negotiated the terms of Gap's offer, including (i) a price for the OP inventory; (ii) the terms of
13 the letter of credit by which Roots would pay for the merchandise; (iii) the brands Roots would
14 sell under the ISP program (*i.e.*, Gap, Banana Republic, and Old Navy); and (iv) the
15 environment in which Roots would sell the ISP merchandise (*i.e.*, in multi-brand stores). The
16 negotiated price, \$6 million, exceeded the market value of the OP. Bell confirmed that if Roots
17 accepted Gap's offer by tendering payment, Gap would compensate Roots by granting it the
18 right to sell first-line merchandise in Roots' own stores in Qatar and in the other Arabic-
19 speaking countries of the Middle East and North Africa, subject only to Gap's approval of
20 specific retailers in those countries.

21 6. Bell represented that the ISP rights would also assist Roots to liquidate the OP
22 inventory, since retailers could be persuaded to purchase the outdated good if they were also
23 offered in-season merchandise. In general, Bell presented the ISP program as a tremendous
24 opportunity for Roots to establish and grow a profitable retail network for Gap products in the
25 Arabic-speaking world. Bell promised that the ISP program would be rolled out quickly to all
26 the Arabic-speaking countries.

1 7. Roots later learned that the ISP program was not designed to generate profit, but
2 rather to protect Gap's international trademarks by providing a minimal volume of sales in
3 certain countries that require a trademark owner to use the mark in commerce in order to
4 preserve its rights. Had Roots known the true nature of the ISP program, it would never have
5 agreed to pay \$6 million for the OP inventory in exchange for ISP rights.

6 8. Following my negotiations with Bell, Roots was not obligated to purchase the OP
7 inventory. Rather, my understanding was that if Roots accepted Gap's offer by making the
8 payment for the OP inventory, Gap would be obligated to grant Roots the ISP rights.

9 9. Bell informed Roots that Gap did not wish to be seen making sales directly to a
10 company based in the Middle East, but instead preferred to use a European company as an
11 intermediary. To address this concern, Gap proposed that it perform its obligations through an
12 intermediary, Gabana. Gap would sell the OP (and later ISP) merchandise to Gabana, which
13 would then simultaneously re-sell the merchandise to Roots. Roots consented to this
14 arrangement, but only on the understanding that it would not in any way extinguish or modify
15 Gap's outstanding offer to Roots. To implement its plan to perform through an intermediary,
16 Gap planned to enter into a written agreement with Gabana, Roots would then enter into a
17 back-to-back written agreement with Gabana that reflected the terms of the Gap-Gabana
18 agreement. Roots had no objection to this proposal, provided that the agreements were
19 consistent with, and did not in any way modify or extinguish, Gap's outstanding offer to Roots.

20 10. On May 12, 2003, Roots and Gabana executed a letter of understanding
21 ("LOU"). The LOU discussed the parties' plan to enter into distribution agreements for OP and
22 ISP, which would reflect the content of the agreements to be signed between Gap and Gabana.
23 The LOU was contingent upon (1) Roots being satisfied that the Gap-Gabana agreements
24 reflected the agreement between Gap and Roots, and (2) the merger of Gabana and Roots.
25 Neither contingency occurred, and the written agreements between Gabana and Roots were
26 never executed.

1 11. Roots and Gabana never proceeded with the contemplated merger. Although I
2 was aware that Larsen informed Gap of the plan to merge Roots and Gabana, Roots never
3 represented to Gap that the merger had occurred. Throughout the parties' relationship, Gap
4 dealt independently with Roots and Gabana, and clearly recognized that they were two separate
5 companies.

6 12. Roots did not participate in the negotiation of the written agreement between Gap
7 and Gabana. On or about May 13, 2003, Gap executed two written agreements with Gabana to
8 document its role as intermediary between Gap and Roots. The agreements appointed Gabana
9 as a non-exclusive distributor for OP merchandise ("OP Agreement") and ISP merchandise
10 ("ISP Agreement"). Roots was not a party to either of these agreements, and was not shown a
11 copy of either agreement before they were executed. Gap and Gabana entered into a new ISP
12 agreement in September 2004. Roots had no role whatsoever in the negotiation of this
13 agreement.

14 13. Larsen informed me about his negotiation with Gap of certain terms of the May
15 2003 Gap-Gabana agreements, including the provisions relating to exclusivity and advertising.
16 I also requested that Larsen convey Roots' requests concerning the content of the written
17 agreements, but I do not know if Larsen complied with these requests. At most, Larsen served as
18 a "messenger" between Gap and Roots. He was not subject to Roots' control and had no
19 express or implied authority to bind Roots to any agreement. We never agreed that he would act
20 as an agent of Roots.

21 14. After Bell reconfirmed the terms of the deal between Gap and Roots – that Roots
22 would get ISP rights in the Middle East if it purchased the OP inventory for \$6 million – Roots
23 accepted Bell's offer by tendering a \$1 million down payment toward the purchase of the OP
24 inventory on May 14, 2003. Roots made the payment by means of a wire transfer to Gabana,
25 which simultaneously transferred the same amount to Gap. Gap was aware of, and requested,
26 this method of payment. As Gap was aware, Gabana made no profit from the sale of the OP
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1 inventory; its role was merely to transfer the money to Gap and pass title to the goods to Roots.
2 All three parties were aware that Gabana had no economic interest in Gap's sale of the OP to
3 Roots. It would, however, received a margin on all ISP sales.

4 15. Several days after Roots made the down payment, on May 20, 2003, Larsen
5 forwarded to me copies of the Gap-Gabana Agreements, together with proposed Roots-Gabana
6 Agreements. When I reviewed the agreements, I noted that certain terms of the agreements
7 differed from the terms Roots negotiated with Gap. For example, the rights Gap granted to
8 Gabana were non-exclusive; the agreement contained severe advertising restrictions that I
9 believed would make it difficult to sell the merchandise; and the agreement was terminable
10 without cause on 90-days notice.

11 16. I conveyed my concerns to Bell who explained to me that because of the need to
12 execute the transaction immediately, Gap and Gabana had entered into a standard form contract
13 that could be approved quickly by Gap's legal department. Bell represented that the Gap-
14 Gabana agreements were only "temporary" and the terms could be improved in the future. For
15 this reason, I did not execute the back-to-back agreements with Gabana, choosing instead to rely
16 on my direct contract with Gap.

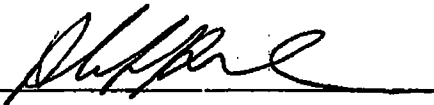
17 17. In the meantime, Bell confirmed that Gap's oral agreement with Roots remained
18 in place, and was in no way modified or extinguished by the written agreements between Gap
19 and Gabana. He further stated that Roots was not bound by the terms of the written agreement,
20 and could rely instead on Gap's oral offer. Bell said the he was the "one in charge of the deal"
21 at Gap, and he would make sure that Roots received what it was promised.

22 18. In reliance on Bell's representations, Roots paid the remaining \$5 million
23 balance of the purchase price for the OP inventory by means of back-to-back letters of credit
24 from Roots to Gabana and from Gabana to Gap. Roots' bank issued the first of the back-to-
25 back letters of credit in favor of Gabana on June 18, 2003. The next day, Gabana's bank issued
26 a letter of credit in favor of Gap for the same amount and on the same terms as the Roots-
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1 Gabana letter of credit. Again, Gabana merely served as a conduit for Roots' payment to Gap.
2 Gabana made no profit from the transaction.
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4 I declare under penalty of perjury under the laws of the United States that the
5 foregoing is true and correct.
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7 Executed this ___ day of August 2008 in the Republic of the Maldives.
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11 Ashraf Abu Issa
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28 DECL. OF ASHRAF ABU ISSA
Case No.: C 07 3363 CRB.